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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,396	05/31/2001	Joseph M. Iglesias	480032-322	4728

7590 07/06/2004

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EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/06/2004 //

Please find below and/or attached an Office communication concerning this application or proceeding.

Restart rejection



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09/857,396	05/31/2001	Joseph M. Iglesias	480032-322	4728

7590 05/17/2004
Alan C Rose
Oppenheimer Wolff & Donnelly
2029 Century Park East Suite 3800
Los Angeles, CA 90067

EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
3764	<i>10</i>

DATE MAILED: 05/17/2004

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Office Action Summary

Application No.

09/857,396

Applicant(s)

IGLESIAS ET AL.

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27,30-34,36-38,40,47-52,54-56 and 59-68 is/are pending in the application.
- 4a) Of the above claim(s) 5,18,19,27 and 51 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 50,52,54-56 and 61-66 is/are allowed.
- 6) ☒ Claim(s) 1,6-10,13,15,16,20,23,24,30,31,47-49,59,60,67 and 68 is/are rejected.
- 7) ☒ Claim(s) 1-27,30-34,36-38,47,59,60,67 and 68 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1-27, 30-34, 36-38, 47, 59-60 and 67-68 are objected to because of the following informalities: Regarding claims 1, 13, 24, 33, 47, 59, and 67-68, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).
2. Claims 55-56 and 59 are objected to because of the following informalities: The phrase 'having appropriate configuration to support the ankle' is vague. Applicant should use the phrase 'adapted to support the ankle'. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 6-10, 13, 15-16, 20, 23-24, 30-31, 47-49, 59-60, 67-68, are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer (U.S. 5,233,767). Referring to claim 1, Kramer discloses an outer shell (42), a molded pad (40, 41) bonded to the shell, the pad having a base layer, the pad having a plurality of molded substantially hollow structures to provide differing levels of cushioning support at different areas of

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the pad, at least some of the structures having a different dimension than others (varying heights), the hollow structure extending substantially perpendicular to the base layer, wherein the molded structures comprise walls, the walls providing cushioning support and having a self supporting free standing construction without inflating or otherwise filling the molded structures.

5. Referring to claim 6, Kramer discloses a liner (30) secured to the pad.
6. Referring to claim 7-8, Kramer discloses the liner is integrated with the pad, and that the liner is air-permeable.
7. Referring to claim 9, Kramer discloses in figure 3, fingers (20), extending from the pad to the outer shell.
8. Referring to claim 10, Kramer discloses the fingers integrally molded to the pad.
9. Referring to claim 13, see rejection of claim 1 above. Furthermore, soles of shoes are substantially rigid.
10. Referring to claims 15-16, Kramer discloses a plurality of cells of cylindrical shape having various heights.
11. Referring to claim 20, Kramer discloses the pad comprising a foam cushion.
12. Referring to claim 23, Kramer discloses a plurality of fingers extending from the pad to the shell.
13. Referring to claim 24, see rejection of claims 1 and 13 above.
14. Referring to claim 30, Kramer discloses a breathable liner covering the pad.
15. Referring to claim 31, Kramer discloses a plurality of integrally molded fingers extending from the pad.

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16. Referring to claim 47, see the above rejections of claims 1 and 13.
17. Referring to claims 48-49, see above rejections of claims 1 and 13. Furthermore, inherently a bladder is formed in the space between the pad and the outer shell (outer sole) due to the presence of fingers (20) spacing the pad and the shell. Kramer further teaches molded structures of varying sizes on various areas of the pad.
18. Referring to claim 59-60, see rejection of claims 1 and 13 above. Kramer teaches resilient cells integrally mounted on the pad providing varying deflection.
19. Referring to claims 67-68, please refer to rejections of claims 1 and 13 above.

Allowable Subject Matter

- Claims 50, 52, 54-56, and 61-66 are allowed. Claims 2-4, 11, 14, 17, 21-22, 25, and 32 are objected to as being dependant on a rejected/objected base claim but would be allowable if rewritten in independent form with objections to the independent claim overcome, including all of the limitations of the base claim and any intervening claims.
20. Claims 33, 34, and 36-40 would be allowable if above noted objections were overcome.

Response to Arguments

21. Applicant's arguments with respect to claims pending have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



fcm
May 17, 2004



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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700